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The Legal Effect of Notice Given by Common Carriers to Limit their Liability

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Thesis

on

The Legal Effect of Notice given by Common Carriers to limit their Liability.

by

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of Occurrence.

Introduction

The consideration of the extent to which common carriers may limit their common law responsebility by notice may well be called a much "vexed question" In the many decisions, the point has been approached from different points of view, leading to directly opposing results, and from this circumstance it is quite difficult to frame any satisfactory rules on the subject from the cases

Notwithstanding the difficulties connected with the subject, it is

nevertheless one which should receive careful attention; for in the determination of the questions raised therein, by the courts, the public is, and ought to be, deeply concerned. As has been well said by several eminent judges, it is not a transaction between parties on the same footing. The common carriers of the present day are generally such large companies, and already have so much power that it becomes important to determine how far they may lawfully dictate to the owners of property and to passengers, by notice,

the terms upon which they will perform toward the latter these common carrier duties

It will be observed that scarce-ly anything as said herein concerning the views taken by English courts on the subject The reason is that the doctrine there has been so unstable and changing that little benefit could be derived from its study. So un-satisfactory had the decisions be-come, that Parliament was o-bliged to pass, in 1854, the so-called "Railway and Canal traffic Act" in order to settle the question, and restore the old common law liability

departed from by the courts in the latter part of the last, and the early part of the present century

In considering the American cases special care has been taken to separate what is actually decided on the facts in each case, from what was said obiter dictum, — for there are many dicta scattered about in the opinions; most of which have been used, but each given its due value arising from the fact that it fell from a strong court or an able judge

Chapter I

General Outline

§1. Scope of the subject.—

The pur-

pose of this thesis is not to investigate the right of the common carrier, in the first instance, to limit his common law liability, but to ascertain whether certain means resorted to by him, with the professed intention of so doing, have in reality that effect in law. It is assumed that as a general proposition the common carrier may limit his common law responsibility, and that he may do so by special express contract, but whether under the same circumstances he may do so

by notice, either general or special, posted in offices, or printed on the faces or backs of bills of lading, shipping receipts, baggage check receipts, or passage tickets, are questions to be herein determined.

In answering these questions, special attention will be paid to the New York law on the subject. Still, that of other jurisdictions, especially of the United States, will be considered particularly where it differs materially from from that of New York, or where special phases of the subject are best treated

§2. Contract law. — The acceptor of a

document containing the terms of a written contract is bound thereby. —

In a majority of the cases the fundamental and decisive question generally is, How far does the acceptance of a shipping receipt for instance bind the shipper by its terms of limited liability, when he does not read them or know of their existence? In general, when a party is contracting and accepts a paper in a common contract form, presented by the other party, the former, if he makes no objections at the time, is bound by all the terms therein contained, whether he informs himself of their

nature, or not (a). So, where a passenger received an ocean steamer ticket headed in large letters: "Passenger's Contract Ticket", and covering nearly both sides of a large sheet, the passenger was held to the terms of limitation of the carrier's liability, though the former did not read them at all (b).

§ 3. Requirements of the rule.—

The document so delivered, however, must be such as purports, and would be so understood by

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(a) Watkins v. Rymill (10 Q.B.D. 178).
Germania &c Ins. Co v. Rd. (72 N.Y. 90)
Rice v. Dwight Mfg. Co. (2 Cush. 80 at 87)
Modano v. Sherard (73 N.Y. 330)

(b) Fonseca v. Cunard Steamship Co. (153 Mass. 553).

the reasonable man, to be a con-
tract, and not something less,
in order to bind the acceptor
to its terms (a)

§ 4. The question then to be
determined is how far this
general rule of contract law
applies to the notices of various
kinds used by common car-
riers in their attempts to limit
their common law responsibility.
The notices are spoken of by writers
and judges as general, or public
and special, or private, and must
be studied with reference to the
particular circumstances under which
each is made.

(a) Huffcutt's Anson on Contract p. 22, note.

Chapter II.

General Notice

§ 2. What it is.—

The courts often make a distinction between general, or public and special, or private notice, but nevertheless use the terms in many cases indiscriminately. There is no definition to be found, so the reader is left to infer one from his lay or legal conception of the terms, and from their application to various facts.

There is no doubt but that notices posted up in offices, for the public, are general notices. So, those on the cars or stages of com-

mon carriers, and those pub
lished in newspapers. In a
North Carolina case (a) a some-
what clearer idea of the term
general notice, as interpreted in
law, is given, where the court
said: "They [common carriers] can-
not by general notice free them-
selves from liability, as for exam-
ple, by general notice of, 'All bag
gage at owner's risk.' The owner
may disregard such notice, and
the baggage notwithstanding the no
tice will be at the risk of the
carrier. But they may, by notice
brought to the knowledge of the
owner, reasonably qualify their li-

(a) Smith and Melton v. N. C. R.R. Co. (64 N. C. 235).

ability — as if the notice be, that they will not be liable for glass in a box, or for articles of unusual value unless informed of the facts." Here the fact of its generality does not necessarily depend upon the manner of its publication, but rather upon the extent of the limitation, and the sweeping breadth of terms used; i.e. it is not particular. "General notice can be given in so many ways, it may assume so many forms, that a mere definition is a matter of difficulty" (a).

(a) Wood's Brown on Carriers, p 205, sec. 123. See also Hopkins v. West Cott (6 Blatch. at 66).

The main desire to arrive at some tolerably definite idea of what is meant by general notice arises when a distinction is made between the legal effect of such and that of special, or private, notices, as is the case in some jurisdictions. Finally, what notice, is to be deemed general must to some extent be left to be determined on the facts of each particular case as it arises.

§ 2. Effect of. — Early New York Dictum.

In one early case(a) in New York,

(a) Orange County Bk v. Brown (9 Wend. 85).

it was held that a common carrier might limit his common law liability, by requiring, by general notice, disclosure of the nature and value of goods if above a specified sum, if such notice be brought home to the knowledge of the owner. The facts of the case were essentially as follows: The defendants owned and ran a steamer from New York to Albany for general passenger trade. Plaintiff's agent with a trunk containing $1250 in bank notes took passage on the boat to deliver these notes to plaintiff's bank at Goshen.

On going aboard, he told the captain that he had a "trunk of importance", and wished it put into the office, as he desired to go ashore. He was referred to the mate, and told him the same thing. The trunk was not so cared for, but lost with its contents. No notice then was therein involved.

The reasoning upon which the above dictum is based proceeds apparently upon the premises that a common carrier may not be one in respect to all commodities, and to all amounts, but may by notice to the public

say what he shall carry, and refuse to carry anything else when offered. This reasoning is a little too broad, for, if pushed to its logical conclusion, the practice of giving such notices would really be a means whereby the carrier might divest himself of one of his common law duties; viz. to receive the goods and carry them, when tendered the reasonable compensation; for the main result would be that the owner must conform to the terms of the notice, or not be allowed to ship his goods.

Again, the court says, in effect,

that since the common carrier is an insurer, he really is carrying on a business for profit - he may make an extra charge. While this view is quite general, as leading to an evasion of a common law duty, yet, like the one above, it will be seen, is true to a certain extent when connected with the subject of rules for reasonable regulation of services and charge, to be referred to later on.

The decision of the case, however, went upon the ground that the plaintiff's agent was guilty of unfair and fraudulent dealing

in imposing upon the defendant the responsibility of carrying the bank notes as baggage, when in reality they were not such. The above statement about general notice is then mere dictum.

§ 3. Leading Cases.— Hollister v Nowlen and Cole v Goodwin.—

These two cases, decided at the same term, and both in the same volume (a), are the corner-stones of the New York rule, and are cited almost everywhere. They hold that general notice, even if brought home to the owner, will not relieve the common carrier.

(a) Hollister v. Nowlen (19 Wend. 234)
Cole v. Goodwin (id. 251).

There must be actual notice to effect the legal limitation. In both cases the notices sought to be relied upon were public ones posted up on defendants' stage-coach stopping-places, and were: "All baggage at the risk of the owner." The plaintiff in Cole v. Goodwin knew of the notice, yet the court said, it was against public policy to allow the defendants by acts of their own to limit their liability for the non-performance of their strict common law duty.

§ 4. Fraudulent conduct of owner.— Still, there is a somewhat

different veil taken of general notices when their object is to prevent imposition upon the carrier. A notice of the general form: All baggage over $25 at risk of owner unless its value or nature be made known to carrier, - becomes the subject of legal construction. The carrier undoubtedly has a right to charge a compensation proportionate to the risk, and hence may ascertain the extent of the risk beforehand. And the courts generally hold that such a notice, if the terms be reasonable, brought home to the knowledge of the owner, will put

the duty of communicating extraordinary risks on the owner, and in case he fails to do so, or makes a false statement in that regard, the carrier is not liable (a). But in Hallister v. Noulen, supra, it was said that such notice must amount to actual notice; thus it seems that the carrier is bound to make inquiries. General notices posted up in all stage-coach offices between Albany and Buffalo are not sufficient to subject the owner to a charge of fraud. In that case, Bronson, J., said, "Fraud cannot, I think,

(a) Orange County Bk v. Brown (9 Wend. 85), Clarkson Cole v. Goodwin (19 Wend.)

be interpreted to the owner from the mere fact that the delivers goods after having seen a general notice published by the carrier, whatever may be its purport. If the carrier wishes to ascertain the extent of this risk, he should enquire at the time the goods are delivered; and then if it is not answered truly, he will have a defense. A different rule practically changes the burden of proof." For ordinarily, all the owner needs, in case of a loss, is to prove the

Hopkins v. Westcott (6 Blatch 64)

delivery to the owner, and this acceptance, and the failure to redeliver; then the carrier, if he relies on a special contract, must prove it; but if he is allowed to set up the notice as effecting such a contract, the owner is then bound to prove want of knowledge or assent, — a negative.

And this principle is in accordance with the primary idea of the duty of a common carrier. The common lays upon him, first, the duty to receive and carry safely, so far as his accommodations and publicly known customs permits him,

all goods tendered him, on the payment, or valid tender, of a reasonable compensation. But when he accepts goods without inquiry as to the risk, he plainly takes all the risk. When, however, the next principle enters into the question; viz; that the charge may be proportional to the risk, the duty is still on the carrier to enquire as to the risk in order to make a proportional charge; otherwise he is presumed to take all the risk for the charge deemed reasonable from the visible character of the goods at the time of making the contract.

Though on principle, it would seem that notices requiring disclosure of contents are ineffectual, yet the weight of authority leans to the opposite view, on the ground, in most cases, that the carrier may make such rules as are reasonable for the regulation of his business (a), at least, if such notice be brought home to the knowledge of the owner (b).

(a) Hopkins v. Westcott (6 Blatch. 64)
The "Majestic" (50 Fed. 624)
Orange County Bank v. Brown (9 Wend. 85)

(b) Cole v. Goodwin (19 Wend. 251), dictum.

§5. Rules in other states.—

11 Massachusetts.

In this state the common carrier cannot by general notice, even if brought home to the owner, limit his liability for all risk (a) Actual assent must be shown, But the carrier can by such notice make reasonable rules for the regulation of his employment as carrier, as requiring disclosure of the nature of the goods, so that he may exercise the proper care over them (a)

Accepting any ticket with indications on the back does not create

(a) Judson v. W. Rd. Corp. (6 Allen 486)
Perry et al v. Thompson et al (98 Mass. 349).

a presumption of assent to the terms (a); but if it be a bill of lading, the rule is otherwise (b)

(2) Pennsylvania.

The law in Pennsylvania on this subject is a good illustration of a gradual change from one view to nearly its opposite. In an early case (c) it was held that the common carrier could limit

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(a) Braun v. Rd. Co. (11 Cush. 97)
Maiune v Rd Co. (12 Gray 288)

(b) Grace v. Adams (100 Mass. 505).
Hoadley v Trans Co. (115 Mass. 304)

(c) Bingham v Rogers (6 W. & S. 495.

this liability by a stipulation in a shipping receipt (called throughout this book a general notice), no matter whether the shipper actually knew of the terms or not. This was evidently on the ground of the general rule of contract law (a), the judge forcibly remarking, "And it is time that it was generally known and understood that if two parties make a contract and reduce it to writing, it binds both parties, at least so far as a construction has been put on such contracts by tribunals of justice".

(a) Supra Chap. I. § 2

another case arose before the court, admitting that the above decision was not right, but bound by the precedent and followed it (a). Still later (b) the court said, under a feeling of reluctance that the principle of exemption had been established, that such notice must be brought to the knowledge of the owner. The limitation must be in a language such that the party can read, even if he read only German. Again, in 1858 (c), it was held, that such notice, must be such

(a) Lang v. Calder (8 Pa. St. 479)
(b) Camden &c. Rd. Co. v. Baldauf (16 Pa. St. 67).
(c) Verner et al v. Sweitzer (32 Pa. St. 208)

as amounts to actual notice;
or shown to have been so con-
spicuous that the party sought
to be affected by it could not
have failed to discover it with-
out gross negligence. This appears
to be the last case on the
subject of general notice directly
adjudicated in Pennsylvania. The
facts were as follows: One H.
was travelling on the Pennsylvania
Railroad and had with him two
trunks belonging to the plaintiff.
One contained valuable fancy goods.
H. gave the checks for these trunks
to defendants' agent who had
boarded the train for the purpose

of getting baggage orders for his principal, the express Company. The agent on return gave M. a receipt, styled in large letters: "Omnibus Check"; and bearing on its face in fine print, "Good for passengers and ordinary personal baggage." The court, while admitting, as a general proposition, the sufficiency of a general notice, if amounting to actual notice, said, however, that the affirmative of proving such actual notice as on the carrier, "and embracing the general object on a check, ticket, or notice, like the one used here, in large letters, but stating the restriction in small letters, is insufficient

Of course, even if the notice is effectual, the carrier is still liable as bailee for hire.

So, while this rule does not necessitate actual assent, the notice must be actual, and, the proof of the latter being on the defendant carrier, it appears from the above case, that such is quite sufficient.

(3) Illinois.

The doctrine in this state in regard to general notice, contained in a shipping receipt, is found in a recent decision of the Appellate Court of 1893 (a) Thus is

(a) Wabash Rd. v Harris (55 Ill. App. Ct. 159)

the latest expression of the Court
on the subject, and as the
case has never been appealed,
nor, as it appears, overruled, it
must be regarded as the law
of the State. The Wabash
Railroad Co. received and gave a
receipt for a box containing
among other things nursery
trees, to be shipped beyond its
own line. The receipt contained
stipulations to the effect that the
Company would not be liable for
any loss occurring beyond its line;
and also that bills for losses
must be presented for settlement
within thirty days after the occur-
rence thereof. The goods were lost on

connecting line. The court said, however, that the presumption was in favor of a true contract, and so the common law liability lay prima facie on the defendant for all losses. But this might be rebutted by proof of a special contract. Yet as "there was no evidence tending to show an actual assent by the appellee to this limitation beyond the mere fact of his acceptance of the receipt without objection, except that he knew the goods were to go by way of Hannibal, and that appellant's liare terminated, as to their carriage, at that point," the jury were warranted in find-

ning that there was no assent.

So, actual assent is necessary, and the limitation, if effectual, must amount to a contract fay

There is a statute on this state regulating this question of notice, to be referred to later on.

Although the terms "general notice", or even "notice" are not used in the decisions referred to, or in the statute, yet the stipulations from their very nature must be regarded as general notices.

1a) Chicago &c. Ry Co v. Chapman (138 Ill. 96)

(14) Virginia.

In this state the leading case (a) arose in 1872. The plaintiff therein purchased of defendant a coupon ticket entitling her to passage from Richmond to Covington, and thence to White Sulphur Springs, the latter part being on another company's stage line, with whom defendant had a contract for carriage. Between the two coupons, on the face of the ticket, were limitations as to the amount of baggage for which the defendant would be liable, - and also that defendants' liability was confined to losses and injuries oc-

(a) Wilson v. Chesapeake Rd. Co. (21 Grattan 654).

carrying on its own lines. A loss occurred on the connecting lines, for which plaintiff sues. The court after construing the defendants' common law responsibility to extend over both lines, said that the defendant would be liable in this case, on the through ticket, unless the notice was effectual. This, it construed to be repugnant to its assumed common law responsibility, and said that it was of no avail unless the passenger assented to it. The notice must be actual, it said, as is well admitted by the weight of English and American authorities. - And the notice

must be brought home to the
consciousness of passengers at train
for them to leave the car, and
have their baggage removed before
the train leaves. Such a rule
as was in conformity with expedi-
ency and reason, because of the
custom of hurry and bustle in
purchasing a ticket, and the
slight probability of the purchaser's
reading it at the time of the
purchase. The Massachusetts case
of Brown v. Rd, supra, is approved
and followed.

The next case(a) was decided
in 1875. It is a valuable one,
as giving a review of the history

(a) Va. & Tenn. Rd. Co. v. Sayers, 26 Gratt. 328.

of limitation of common law liability of the carries, and a review of the leading authorities, both English and American, While the contract, or stipulation, under discussion does not involve what would be usually termed general notice, for the reason of the length of the receipt, and the reduced rates, and the like; and hence what could be said about genesal notice could be cited to a certain extent, yet the views of the court are valuable as a review of the law, and as an indication of the line on which Virginia cases may be decided in the future. It is somewhat

strange that the preceding Virginia case above mentioned, is not in anyway referred to, and all the more so, because that case is slightly at variance with what is said in this case. Here the court says in effect that it is well settled that the common carrier may limit his common law responsibility by "public notice brought home to the owner of the goods, or by inserting exemptions from liability in the bill of lading or other contract of carriage", in cases where otherwise there would be a peculiar hardship thrown upon the carrier; but not to limit his responsibility for ordinary negligence of himself and servants

Actual assent by the owner is not expressly laid down as essential to the force of the notice, — simply knowledge. The peculiar cases of hardship mentioned are the carriage of highly valuable articles, perishable things, and animals, unruly, or otherwise apt to do self injury.

Perhaps, what was said with reference to notices on bills of lading &c, would, under the United States rule, come within the doctrine of special notice, supra.

The only other case(a) in Virginia relating in any way to general notice is the one decided in 1886. There the plaintiff's fur-

(a) N & W. Rd. Co. v Taylor (82 Va. 250).

chased a coupon ticket, amounting, in reality to a mileage book, which he signed, and which contained regulations, that no coupons would be accepted unless torn out by the conductor. These were known to the plaintiff when he purchased the ticket. He attempted to pass onto the conductor torn out coupons, which the latter refused, and then on plaintiff's refusal to pay anything else, put him off the train, for which act this action is brought. The court said that the company had the right to make reasonable rules and regulations to conduct its business, and when knowledge of such as brought home to passengers they must adhere

the rules. The rules must accurately state only to such things as the courts can carefully regulate; and not to limitation of responsibility for negligence, nor may they be conflicting with any legal liability. The question of reasonableness is for the court to pass upon.

(5) United States

The earliest important expression of the Federal Supreme Court on the subject of general notice occurred in 1848, in a case (a) in which the determination of the legal effect of such notices was not necessary

(a) New Jersey &c Co v. Merchants' Bk (6 How. 344).

to the decision of this case, but yet showed the future view of the court. Nelson, J., said; "But admitting the right [2.8 by express stipulation of the parties] thus to restrict his obligation, it by no means follows that he can do so by any act of his own. He is in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation which may or may not be assented to. ..... And we agree with

the court in the case of Hollister v. Nowlen, that of any implication is to be indulged from the delivery of the goods under the general notice, it is as strong that the owner intended to insist upon his rights [i.e. to have his good carried], and the duties of the carrier, as it is that he assented to their qualification." Again, "The burden of proof lies on the carrier, and nothing short of an express stipulation by parol or in writing should be permitted to discharge him from duties which the law has annexed to his employment. The exemption from

These duties should not de-
pend upon implication or in-
ference, founded on doubtful and
conflicting evidence, but should
be specific and certain, leaving no
room for controversy between the
parties."

In 1865, a case (a) arose where
the exemptions were contained in
limitations expressed in a bill of
lading for the shipment of cotton.
The court assumes this to be neither
general nor special notice, but rather
a contract; and says, "the carrier
cannot screen himself from liability
by any general or special notice,
nor can he coerce the owner to

(a) York Co. v. Cent. Rd. (3 Wall. 107)

yield assent to a limitation of responsibility by making exorbitant charges when such assent is refused."

In 1872, (a) the discussion was over a shipping receipt, containing on its back, notice to the effect that all goods were at the risk of the owners, &c. The court said that this was plainly a mere general notice, and no part of the receipt, and it would be against public policy to allow it to have the effect of limiting the carrier's liability. The two cases above were approved and followed.

(a) Rd. Co v. Mfg. Co. (16 Wall. 318)

In a recent case (1944), decided in the Circuit Court of Appeals a) the plaintiff had purchased a steamship passenger ticket, on the face of which were several conditions and notices, but none referring to those on the back. At the bottom of the face side were the words "See back". On the back were various notices and conditions, one of which exempted the defendant from liability for losses occurring through perils of the sea, and one limiting liability for baggage to the amount of £10, unless unless extra charge be paid. The

court here makes a distinction and says that the former notice being a mere notice cannot limit the defendants common law liability which in this case is a definite one; but in the case of the baggage the common law had set no definite liability, and hence it was a subject concerning which the carier might make reasonable rules and regulations. This one being reasonable, and brought to the knowledge of the plaintiff, or at least such being implied by reason of his long detention of the ticket before seeing it, it must be regarded as binding

So, the United States has never gone beyond the strict rule that general notices are not availing unless brought to the knowledge of the owner or passenger in such a way as to imply assent on his part, where such notice is intended to limit a definitely ascertained common law liability.

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The doctrines of these jurisdictions have been examined in detail more as illustrations of the general holding on such questions than as an attempt to give a complete list of the holdings in all jurisdictions

§ 6. Statutes. —

Owing to the pre-
vailing tendency of the common
carrier to attempt to limit his li-
ability by notice of all kinds,
and to the increasing inclination
of the courts to give effect to
them, the legislatures of some
states have passed acts to pre-
vent such attempts from being
successful. For example the Michi-
gan statute (a) enacts, "That no
railroad company shall be per-
mitted to change or limit its com-
mon law liability as a common
carrier, by any contract, or in any
other manner, except by a written

(a) Howell's Ann. Stats. (1882) § 3418

contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods or property to be carried."

The Illinois statute (a) enacts;

"That whenever any property is received by a common carrier, to be transported from one place to another, within or without this state, it shall not be lawful for such carrier to limit his common law liability so as to deliver such property at the place to which the same is to be transported, by any stipulation or limitation expressed in the receipt given for such property."

Ill. R. S. (1895) p. 369, Ch. 27

Although not all the cases considered in this chapter would consider a motion can be strictly included within the term "general notice", yet those that would not have been discussed as coming under that classification, simply because the courts deciding them have done so regarding them as instances of general notice. And herein, it will be seen lies the difficulty of exactly expressing what is to be called a "general notice".

Chapter III.

Special Notice

§ 1. What it is —

Since it was difficult to define general notice, because the boundary line between that and special notice was obscure, the same difficulty is encountered in stating the limits of the signification of the term "special notice".

Surely, in all cases of direct personal verbal or written communication by way of notice is special. Furthermore, it seems a just inference from the line of United States cases that all

notices on the backs of tickets, receipts, etc., and not conspicuous by reason a part of the contract are general, unless all on the face of the contract, and printed in it are special. In one of the cases above,(a) the condition appeared to be on the face of the receipt, limiting the liability for baggage above a certain value. The court said, "But in the case now before the court, the defense does not rest upon a general notice, with constructive knowledge of which the plaintiff is to be charged, by proof that it was

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(a) Hopkins v. Westcott (6 Blatch 64)

generally and carefully framed
gated. If acts on a special
printed notice, sent into the
hands of the plaintiff, at the
time the alleged sale check to
the defendants."

Again, a North Carolina case (a)
states an tolerably good rule
as to what constitutes special
notice. Although the court there
confessedly employs an argument
to meet the case of a special
notice, and while the decision
goes off on the liability for negli-
gence, yet the remarks as to spec-
ial notice, will be valuable, as
well as the facts substantiating
such notice The defendant gave

(a) Capehart v Rd. Co. (81) N.C. 438

plaintiff a suit of lading for cotton to be shipped on the own line, attached to which was this stipulation: "That in case any claim should arise from any damage or loss of articles mentioned in this receipt, while in transit, or before delivery, the extent of such damage or loss shall be adjusted in the presence of an agent of the line, before the same be removed from the station, and such claim must be sent within thirty days after the damage or loss occurred, to James McCamick, Portsmouth, Virginia, who has authority to settle such claims. Upon these facts the court said it was a

special notice. This case of special notice could undoubtedly come within the view taken by the federal authorities, because the mere "attachment" of the notice would be as effectual as putting the same upon the face of the very document itself.

§ 2. Effect of.—

From the above North Carolina case it appears that the court would hold a special notice effectual, if it be reasonable. In that case it was regarded as unreasonable.

Another decision directly in point is found in Hopkins v. Chestnut,

supra, learned judge Shipman said, "It can make no difference that plaintiff did not choose to read it, till after his trunk was lost. He received it at the time he parted with his check, it was legibly printed, and he must be charged with actual notice of its contents. ---- Though as will be seen in the sequel, this point is of no practical importance in this suit, yet I am unwilling to leave it to be inferred that I entertain any doubt of the power of the carrier to limit by this common law responsibility by special notice actually given to the owner

under circumstances like these!"

The "circumstances" were these: a receipt for baggage checks, on which receipt was a printed limiting the liability for baggage to $100. unless &c.

But few cases will be found expressly deciding as to the effect of special notices, but in reality all those cases, in which the facts bring the notice within the above vaguely defined limits of its meaning, and in which the conditions or limitations were held binding, must be regarded as cases of effectual special notice. And these cases will be more readily distinguished when a treatment is made of the places where notices are put, as regards bills of lading, and tickets &c.

Chapter IV.

Notices Classified on Basis of Place of Occurrence

§ 1. Practical mode of treatment.—

While the treatment of the effect of notice based on the generality or specificness of their nature is slightly theoretical, and while the courts in many instances prefer to treat them on such a basis, still the practical mode, and the one really adopted by courts in many cases, is that by classifying according to the place of occurrence and the attendant circumstances.

§ 2. Notices in public places.—

The general rule is that such notices are not effectual to limit

The carrier's liability, at least if not actually assented to (a).

§ 3 Bills of lading. — Under this head all receipts for goods shipped are generally classed, though sometimes mere receipts are called Domestic Bills of Lading. These documents are of such a large size, and generally put in a form so nearly resembling that of a contract, that they come within the general rule of being something which purports to be a contract; and hence it is generally held, that acceptance of the bill of lading or shipping receipt,

(a) Hollister v. Nowlen (19 Wend 234). Cole v. Goodwin (id 251).

without dissent, is effectual in binding the acceptor to the reasonable terms therein found(a). But it appears that in some states, more acceptance is not conclusive in establishing the shipper's assent (b). In Pennsylvania, the stipulation, if it attempts to relieve a true common law liability, as distinguished from regulations to prevent imposition on the carrier, is ineffectual (c)

(a) Capehart v. Rd. Co. (81 N.C. 438)
Huckley v. N.Y. & C. Rd. Co. (5 E N.Y. 424).
Blossom v. Dodd (43 N.Y. 264)

(b) Wabash Rd. Co. v. Harris (33 Ill. App. 159)
Central &c. Rd. Co. v. Hasselcus (17 S. E. 838) (Ga).

(c) Wallick v. Rd. (166 Pa. St. 184)

§ 4. Baggage Check Receipts. — As a general rule, notices on such receipts, have no value, unless shown to have been assented to (a). The question of assent is merely one of fact (b).

§ 5. Passenger Tickets. —

(1) Ocean Steamship Tickets.

The ocean steamship ticket is of such size and

(a) Hopkins v. Westcott (6 Blatch. 64)
Peoples v. Decker (49 Barb. 211)
Linsburger v. Westcott (1 id. 283)
Blossom v. Dodd (43 N.Y. 264)
Woodruff v. Sherard (9 Hun 322)

(b) Grossman v. Dodd (63 Hun 324)
Madan v. Sherard (73 N.Y. 330)

description as would to the reasonable man purport to be a contract; and so the general rule is that all reasonable stipulations contained therein, are valid (a); but, it seems, the federal court will not so regard them, unless so placed as to be a part of the contract, unless some proof of assent to, or duty to know of, the contents be given (b). In Steers v Steamship Co the court remarks, "Looking to the course of business, the court may take

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(a) Steers v. Steamship Co. (57 N.Y.1).
Fonseca v Cunard Steamship Co. (153 Mass 553).

(b) The "Majestic" (60 Fed. 624)
Wheeler v. Nav. Co (172 Mass 3).

notice that an engagement for a voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket, or taking an express company's receipt for baggage or for freight. There is, therefore, no room in such a case for the suggestion that the party is surprised into a contract, when he supposes himself only to be taking a token indicative of his right."

(2) Free tickets: "Passes." —

There seems to be no general rule in this class of notices, nor does it be a tendency to hold them valid. In a Washington

case (a) it was held that notice on the back of a "pass" was valid, and that the reason for the invalidity in ordinary tickets based on similar policy, did not apply here, for it is not a case of a common law duty, — the whole transaction being, as it were, a proposal to the company to carry free, which it is not found to do.

A New York case (b) likewise held a notice on a free ticket valid, but the plaintiff's testatrix (person using the ticket) had his attention called to the limitation, when he took the ticket, and also had the same on his pas-

(a) Muldoon v. Seattle &c. Co. (7 Wash. 528) (1893)
(b) Perkins v. N.Y. & C. Rd. Co. (24 N.Y. 196)
See also Wells v. Same (id. 181)

session for several days before issuing it, and hence was presumed in any case to know its contents

(4) Ordinary passenger tickets. — Railroad tickets. —

"The decisions as to railway tickets are not entirely harmonious. The weight of authority is that printed matter upon such a ticket does not constitute a contract, and that the ticket is a mere voucher showing that the passenger has paid his fare (a)." Although this undoubtedly this is the general rule (b), whether

(a) Wheeler on Mod. Laws of Carriers: (p. 265)

(b) Blossom v. Dodd (43 N.Y. 264)
Brown v. Rd. (11 Cush. 97)
Grundy v. Vanderbuilt (17 N.Y. 306).
Wilson v. Rd. Co. (21 Gratt 654)

printed on the face or back (a), and although tickets are not so for contracts, but that parol evidence is admissible to prove a contract entirely different from that which the ticket ostensibly purports to evidence (b), yet a distinction must be made between the general case and that one in which the notice is intended to effect a reasonable rule or regulation in regard to the company's business. Such notices are; e.g. "Good this date only" (c) In

(a) Ranson v. Penn. Rd 148 N.Y. 212.

(b). Lumley v. Vanderbuilt (11 Hun 306)
Van Buskirk v. Roberts (31 N.Y. 661)

(c) Elmore v. Sands (54 N.Y. 512)
Barker v. Coffin (31 Barb. 556)

such a case, if the notice is reasonable, and brought home to the knowledge of the purchaser, ~~to~~ or so presumed and inferred from the circumstances, the general rule probably is that they notice will be upheld as valid.

Table of Cases Cited.